

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONTE MCCLELLON,

Defendant.

CASE NO. 2:22-CR-00073-LK

ORDER GRANTING MOTION TO
CONTINUE TRIAL DATE

This matter comes before the Court on a motion seeking a continuance of the trial date filed by Defendant's appointed attorneys, Kristen Murray and Christopher Black. Dkt. No. 137. The Government does not oppose the motion, but Defendant Donte McClellon does. *Id.* at 1. The Court held a hearing on the motion on September 14, 2023, and heard from Mr. McClellon, his counsel, and the Government. Dkt. No. 141.

The Federal Public Defender's Office was appointed to represent Mr. McClellon on May 19, 2022. Dkt. No. 5. On January 31, 2023, the Court heard and granted Defense counsel's Motion to Withdraw and for Appointment of CJA Counsel. Dkt. Nos. 84–85. Ms. Scanlan was appointed to represent Mr. McClellon on February 2, 2023, Dkt. No. 88, and Ms. Murray was appointed as

1 second counsel for Mr. McClellon on February 6, 2023, Dkt. No. 93. They then devoted significant
2 time to multiple matters on Mr. McClellon's behalf, including a motion to continue the trial date,
3 Dkt. No. 96; Mr. McClellon's oral motion for new counsel, Dkt. No. 99; a motion for review of
4 the denial of his prior motion for new counsel, Dkt. Nos. 101, 104; a hearing on bond revocation,
5 Dkt. Nos. 113; and defense counsel's motions to withdraw as counsel, Dkt. Nos. 106, 118; *see also*
6 Dkt. No. 124 at 3–4 (cataloguing counsel's representation since appointment). On April 12, 2023,
7 United States Magistrate Judge Brian A. Tsuchida held a hearing on Ms. Scanlon and Ms. Murray's
8 motion to withdraw as counsel, Dkt. No. 118, denied the motion, and directed the appointment of
9 a third attorney to represent Mr. McClellon, Dkt. No. 123. Defense counsel moved to continue the
10 trial date, and the Court granted the motion based in part on "the substantial time defense counsel
11 has had to devote to three motions to withdraw" and other matters. Dkt. No. 127 at 2.

12 All three attorneys moved to withdraw on August 7, 2023. Dkt. No. 133. On August 10,
13 2023, Judge Tsuchida held a hearing and granted the motion as to Ms. Scanlan and denied it as to
14 Ms. Murray and Mr. Black. Dkt. No. 136.

15 Defense counsel states that since the Court granted the prior continuance, they have
16 "worked diligently to move Mr. McClellon's case towards trial," including "discovery review,
17 legal research, consultation and meetings with experts, regular meetings with Mr. McClellon, and
18 multiple prongs of investigation." Dkt. No. 137 at 4–5. However, one of their experts "has not
19 been able to complete what s/he needs to do in a time frame that allows [defense counsel] to finalize
20 decisions about Mr. McClellon's defense, prepare necessary and timely disclosures, and proceed
21 to trial as currently scheduled." *Id.* at 5. Engaging a different expert "is impractical for many
22 reasons" and doing so "would likely require even more delay." *Id.* at 7. The motion also sets forth
23 Mr. McClellon's objections to a continuance. *Id.* at 5–6.

1 Based on the facts set forth in the motion, the statements made during the hearing, and the
2 record in this case, the Court finds that the ends of justice would best be served by granting the
3 requested continuance. The additional time requested is a reasonable period of delay and a
4 continuance is necessary to ensure that the defense has adequate time to prepare effectively for
5 trial in light of the complex nature of the case and the need for additional expert work. *See id.* at
6 2–5, 7–8. A failure to grant the continuance would deny the defense the reasonable time necessary
7 for effective preparation for trial and other pretrial proceedings, taking into account the exercise
8 of due diligence. 18 U.S.C. § 3161(h)(7)(B)(iv). The Court finds that these ends outweigh the best
9 interests of the public and the Defendant in any speedier trial. *See id.* § 3161(h)(7)(A). For these
10 reasons, the failure to grant a continuance would also be likely to result in a miscarriage of justice
11 within the meaning of Section 3161(h)(7)(B)(i).

12 For the foregoing reasons, and the reasons explained during the hearing on this motion, the
13 motion is GRANTED. Dkt. No. 137. The trial date shall be continued from October 30, 2023 to
14 December 4, 2023. Pretrial motions must be filed no later than October 23, 2023.

15 It is further ORDERED that, pursuant to 18 U.S.C. § 3161(h)(7)(A) and (B), the period of
16 delay from the date of this Order to the new trial date is EXCLUDED when computing the time
17 within which the trial must commence under the Speedy Trial Act.

18 Dated this 14th day of September, 2023.

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20 Lauren King
21 United States District Judge
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